

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-Amex-95-36), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36391; File No. SR-CBOE-95-52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Suspension of the Ten Contract Firm Quote Requirement During Fast Markets

October 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 5, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rules 8.51, 6.6 and 6.20 Interpretation .09 to: (i) remove the pilot status of Rule 8.51; (ii) conform Rule 8.51 to the existing practice of permitting, but not requiring, Floor Officials to suspend the ten contract firm quote requirement of Rule 8.51(a) during a fast market; (iii) expand the group of persons with authority to grant suspensions, exemptions or exceptions to Rule 8.51 (currently only the Market Performance Committee) to any two Floor Officials; (iv) specify that when a fast market is declared any two Floor Officials have the power to suspend the firm quote requirement of Rule 8.51 and turn off the Retail Automatic Execution System ("RAES"); (v) allow the senior

person then in charge of the Exchange's Control Room to suspend the ten contract firm quote requirement under certain circumstances; and (vi) amend Rule 6.20 Interpretation .09 to clarify the instances where a member of the Market Performance Committee may perform the functions of a Floor Official. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purposes of the proposed rules changes are: (1) to approve Rule 8.51 on a permanent basis, removing the current pilot program designation, (2) to conform Rule 8.51 to the existing practice of permitting, but not requiring, Floor Officials to suspend the ten contract firm quote requirement of Rule 8.51(a) during a fast market, (3) to expand the group of persons with authority to grant suspensions, exemptions, or exceptions to the firm quote requirement from the Market Performance Commission members to any two Floor Officials, (4) to specify that when a fast market is declared pursuant to Rule 6.6, two Floor Officials have the power to suspend the firm quote requirement of Rule 8.51 and turn off RAES, (5) grant the senior person then in charge of the Exchange's Control Room the authority to suspend the ten contract firm quote requirement, if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes, and (6) to amend Rule 6.20 Interpretation .09 to clarify that the instances where a member of the Market Performance Committee may perform the functions of a Floor Official include enforcing policies and acting pursuant to rules related to RAES, fast markets, and the ten contract firm quote requirement.

Rule 8.51(a) requires a trading crowd to sell (buy) at least ten contracts at the offer (bid) which is displayed when a buy (sell) customer order reaches the

trading crowd. Initially, this rule was adopted as an Exchange pilot program to be monitored and enforced by the Exchange's Market Performance Committee.³ The rule has been in effect since 1989, and the Exchange believes it is now time to remove the designation as a pilot program. The Exchange believes that the rule has been beneficial to investors and has provided greater liquidity to the markets by requiring that the orders of non-broker dealer customers be filled for at least ten contracts at the displayed quote price.

Rule 8.51(a)(2) currently provides that the ten contract firm quote requirement will be in effect unless a fast market has been declared. Although not presently explicit in the rules, it is current practice not to automatically suspend this requirement when a fast market has been declared. Instead, pursuant to Rule 8.51(a)(3), when a fast market has been declared, Market Performance Committee members determine whether the ten contract firm quote requirement in paragraph (a) of Rule 8.51 should be suspended. The proposed amendment would amend Rule 8.51(a)(2) and add Interpretation .07 to clarify that the ten contract firm quote requirement in paragraph (a) of Rule 8.51 is not automatically suspended when a fast market is declared. Instead, Interpretation .07 would provide that any two Floor Officials have the power, but are not required, to suspend this requirement when a fast market has been declared.

CBOE believes the interests of a fair and orderly market are better served when the rules allow Exchange officials the discretion to evaluate market conditions and circumstances and to exercise their judgment as to whether the ten contract firm quote requirement should be suspended in a fast market. This permits the firm quote requirement to remain in place for the benefit of non-broker dealer customers even when a fast market has been declared, except in those specific instances where two Floor Officials have determined that the ten contract firm quote requirement should be suspended.

As set forth in Interpretation .09 to Rule 6.20, members of the Market Performance Committee may perform the functions of Floor Officials for the purpose of enforcing trading conduct policies. As Rule 8.51 is presently written, only the Market Performance Committee or Market Performance Committee members acting as Floor Officials may grant exemptions or make exceptions to Rule 8.51. CBOE believes

³ See Securities Exchange Act Release No. 26924 (June 13, 1989), 54 FR 26284 (June 22, 1989).

1995); and 36283 (September 26, 1995), 60 FR 51825 (October 3, 1995).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Floor Officials from the Floor Officials Committee are also qualified to make decisions regarding exemptions and exceptions to Rule 8.51. CBOE sees no reason to limit this power to members of the Market Performance Committee. CBOE also believes that the power to suspend Rule 8.51 once a fast market is declared should be granted to *any* two Floor Officials, whether they are members of the Market Performance Committee or members of the Floor Officials Committee.

CBOE's proposal would grant equal power to members of the Floor Officials Committee and members of the Market Performance Committee to act under Rule 8.51 regarding suspensions, exceptions or exemptions to the firm quote requirement. It is important for a timely decision to be made once a fast market has been declared or other situations have arisen which warrant the suspension of the firm quote requirement, or an exemption or exception to this requirement. CBOE believes that it could be detrimental to a fair and orderly market to delay action until a member of the Market Performance Committee could be found to make such a decision when members of the Floor Officials Committee might already be present at the trading post. To implement CBOE's intention that *any* two Floor Officials may make decisions under Rule 8.51, including members of the Market Performance Committee acting as Floor Officials and members of the Floor Officials Committee, the proposal would amend Rule 6.20, Interpretation .09, amend Rule 8.51(a)(3), and add Interpretation .06 to Rule 8.51. In addition, the proposal would amend Rule 8.51 to clarify that in deciding whether to grant a suspension, exception or exemption to the firm quote requirement, Floor Officials consider whether to do so would be in the interest of a fair and orderly market.

Because Rule 8.51 requires that Exchange market makers honor non-broker dealer customer orders at the displayed quote for up to ten contracts, it is important that the displayed market quote be accurate. Otherwise, market makers would be forced to trade ten contracts at an inaccurate or "stale" quote price. Therefore, if there is a system malfunction or other circumstance which interferes with the Exchange's ability to disseminate the then current and accurate quote, it is important for the Exchange to be able to act quickly to suspend the market maker's obligations under Rule 8.51 until the difficulty is resolved. To implement such a quick response, the proposal would further amend Rule 8.51

to grant to the senior person then in charge of the Exchange's Control Room the authority to suspend the ten contract firm quote requirement contained in Rule 8.51(a) if there is a system malfunction or other circumstance that affects the Exchange's ability to disseminate or update market quotes. After exercising such authority, the senior person would need immediately to seek approval of two Floor Officials, who would be empowered to confirm or overrule the suspension.

It is important for the Control Room to have this power to suspend the firm quote requirement, since the Control Room would most likely learn of the system malfunction or other circumstance before Floor Officials or other Exchange staff. Consequently, the Control Room could act in a timely manner to prevent market makers from having to trade at "stale" market quotes. If the Control Room does invoke its power to suspend the firm quote requirement, then the Control Room would disseminate a message notifying the public that the displayed quotes are not firm because of a data dissemination problem. This would inform non-broker dealer customers that their orders would not necessarily be filled at that displayed bid or offer. Once the system malfunction has been corrected and the market quotes have been updated, either the senior person then in charge of the Exchange's Control Room or two Floor Officials would be required to end the suspension of the firm quote requirement.

As it is presently written, Rule 6.6(b) provides that the two Floor Officials declaring a fast market have the power to take a number of specified actions and more generally to take such other actions as are deemed necessary in the interest of maintaining a fair and orderly market. When a fast market has been declared, pursuant to these general powers, Floor Officials will often, in the interest of maintaining a fair and orderly market, suspend the ten contract firm quote requirement of Rule 8.51. This decision to suspend the firm quote requirement is made often during a fast market because the displayed quote is not current or accurate due to the influx of orders or other unusual circumstances. Therefore, market makers should not be forced to trade ten contracts at an inaccurate quote. In order to notify members and the public that, during a fast market, Floor Officials may suspend the firm quote requirement, CBOE proposes to specify in Rule 6.6(b) that when a fast market is declared, Floor Officials have the power to suspend the ten contract firm quote requirement of Rule 8.51.

For the same reasons, after a fast market declaration, another action Floor Officials may take in the interest of maintaining a fair and orderly market is to turn off RAES. When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry into the system. A buy order will pay the prevailing market quote for an offer and a sell order will sell at the prevailing market quote for the bid. A market maker who has signed on as a participant in RAES will be designated as a contra-broker on the trade. Trades are assigned to these participating market makers on a rotating basis. Therefore, by agreeing to participate in RAES, a market maker is automatically assigned trades based on the prevailing market quote that is then being disseminated. Consequently, it is important for the prevailing market quote to be accurate, because otherwise market makers participating in RAES may be assigned trades at prices other than the actual prevailing market quote. During a fast market, often the influx of orders is greatly increased or other unusual circumstances exist that affect the accuracy of the prevailing market quote. For this reason, Floor Officials, acting under the general powers of Rule 6.6(b), may turn off RAES to prevent market makers from being assigned trades based on inaccurate market quotes. In order to notify members and the public that such action may be taken in a fast market, CBOE proposes to amend Rule 6.6 to specify that Floor Officials have the power to turn off RAES after a fast market has been declared.

Furthermore, as Rule 6.6(b) is presently written, it could be interpreted that only the same two Floor Officials who declared the fast market have the power to take the other actions specified in Rule 6.6(b). CBOE's practice has been that *any* two Floor Officials have the powers specified in Rule 6.6(b), not just the specific two individuals who declared the fast market. Therefore, CBOE proposes an amendment to Rule 6.6(b) to clarify that any two Floor Officials have the powers specified in 6.6(b).

CBOE believes that members of the Market Performance Committee, who perform Floor Officials functions, as well as Floor Officials who are members of the Floor Officials Committee, are equally qualified to make decisions regarding Rule 6.6. To clarify that members of the Market Performance Committee may also act pursuant to Rule 6.6, the proposal would amend Rule 6.20 Interpretation .09 to specify

that the Floor Official functions that Market Performance Committee members may perform include acting pursuant to rules related to fast markets and RAES. Again, when circumstances arise which might require the declaration of a fast market, it is important for timely decisions to be made regarding the declaration of a fast market and other related decisions specified in Rule 6.6. CBOE believes that it could be detrimental to a fair and orderly market to delay action until a Floor Official from the Floor Officials Committee is found to make such decisions when members of the Market Performance Committee might already be present at the trading post.

The Exchange believes that the proposed rule changes are consistent with and further the objectives of Section 6(b)(5) of the Act, in that the rule changes are designed to perfect the mechanisms of a free and open market and to protect investors and the public interest by enabling any two Floor Officials to evaluate and consider market conditions and circumstances in determining whether to suspend the firm quote requirement of Rule 8.51 during a fast market. The proposed rule changes clarifying the powers of Market Performance Committee members and specifying the powers Floor Officials may invoke during a fast market are also consistent with and further the objectives of Section 6(b)(5) of the Act, in that they too are designed to perfect the mechanism of a free and open market and to protect investors and the public interest. The proposed rule change regarding the authority of the Control Room to suspend the firm quote requirement when there has been a system malfunction affecting the dissemination or updating of quotes is also consistent with and further the objectives of Section 6(b)(5) of the Act, in that the change is designed to perfect the mechanism of a free and open market.

The Exchange also believes that the proposed rule changes, collectively, are consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR-CBOE-95-52 and should be submitted by November 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

⁴ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36384; File No. SR-DTC-95-19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Compliance With Confirmation Disclosure Requirements Through the Use of the Institutional Delivery System

October 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 4, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to make additions to its Participant Operating Procedures² to enable broker-dealers that use DTC's Institutional Delivery ("ID") system for generating confirmations for their customer transactions to comply with certain disclosure requirements of Rule 10b-10 under the Act.³

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in section (A), (B),

¹ 15 U.S.C. § 78s(b)(1) (1988).

² The additions to DTC's Participant Operating Procedures, Section M—ID System, are attached as exhibit 2 to DTC's filing (File No. SR-DTC-95-19) and are available for review in the Commission's Public Reference Section.

³ 17 CFR 240.10b-10 (1994).